Wayrex Sdn Bhd & Anor v Lee Ewe Bee & Ors

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO P-02(IM)-969 OF 2010
KN SEGARA, MOHD HISHAMUDIN JJCA AND ABDUL AZIZ ABDUL RAHIM J
22 MARCH 2011

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Civil Procedure — Striking out — Application to strike out action — Action to set aside sale of unadministered land after vendor obtained grant of letters of administration — Whether sale sanctioned by court order — Whether action ought to be struck off — Whether action abuse of process of court and unsustainable — Rules of the High Court O 18 r 19

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Land law — Indefeasibility of title and interests — Fraud — Sale of unadministered land after vendor obtained grant of letters of administration — Claim to set aside sale of land — Whether application was in breach of compromise agreement not to file proceedings against purchasers of land — Whether sale sanctioned by court order — Whether claim ought to be struck off — Whether purchaser had acquired indefeasible title to land — National Land Code s 340 — Probate and Administration Act 1959 ss 60(4), 64(3)

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The judgment in the present case involved a piece of land situated in Penang ('the land') that formed part of the estate of one Lim Mah Ee @ Baba Mahee ('the deceased'). Although the deceased had died sometime in 1848, the land remained unadministered up to 1992. Yeon Oon Theam ('the first defendant'), one of the beneficiaries and the proposed administrator of the estate of the deceased, had agreed to sell the land to Wayrex Sdn Bhd ('the fourth defendant') or its nominee for RM450,000. Under this agreement it was agreed that the first defendant, vendor, would at his own cost and expense apply for the grant of letters of administration to the estate of the deceased and an order of court sanctioning the sale of the land at the price of RM450,000 from him to the fourth defendant. The first defendant duly obtained the grant of letters of administration and an order of court for the sale of the land. Upon payment of the full purchase price, the first defendant executed the transfer in Form 14A to Hybrid Gold Sdn Bhd ('the fifth defendant'), the nominee of the fourth defendant. Whilst the adjudication of the transfer in Form14A was pending, Lim Ewe Bee and others ('the plaintiffs'), who claimed to be beneficiaries entitled to the estate of the deceased, caused a registrar's caveat to be lodged on the land on the grounds that the fourth and fifth defendants had acquired the land by fraud. The plaintiffs also filed a suit ('the first suit') to set aside the grant of letters of administration and the order of court sanctioning

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the sale. The fifth defendant successfully applied to set aside the registrar's caveat and obtained an order to register the said transfer. Thereafter, pursuant to a compromise agreement executed between the plaintiffs and the fourth and fifth defendants, the plaintiffs by an order of court wholly discontinued their suit against the fourth and fifth defendants without liberty to file afresh. However, the plaintiffs have now filed the present suit ('the second suit') to, inter alia, set aside the grant of letters of administration and the court orders on the grounds of fraud and conspiracy. The application by the fourth and fifth defendants to strike off this suit was dismissed with costs and hence this appeal.

Held, allowing the appeal with costs:

(1) The plaintiffs' second suit against the fourth and fifth defendants was an abuse of the process of the court and unsustainable. This suit was bound to fail because of the compromise agreement and the order of court wherein the plaintiffs had by consent agreed not to file any fresh suit. Hence the writ of summons and statement of claim filed by the plaintiffs against the fourth and fifth defendants was struck off (see para 18).

(2) The first defendant's sale of the land to the fourth and fifth defendants was sanctioned by the court order under s 60(4) of the Probate and Administration Act 1959 (the Act). Thus, based on the facts of the case, the fifth defendant had clearly acquired an indefeasible title to the land under s 340 of the National Land Code read together with s 64(3) of the Act, which could not be set aside (see paras 13 & 19).

(3) The purported beneficiaries of the estate of the deceased had only themselves to blame for not ensuring that the land was distributed and vested in the lawful beneficiary in 1848, or soon thereafter. In the circumstances they were deemed to have forfeited and/or waived their legal and/or equitable rights, if any, to the land (see para 20).

[Bahasa Malaysia summary

Penghakiman dalam kes ini melibatkan sebidang tanah yang terletak di Pulau Pinang ('tanah') yang membentuk sebahagian daripada harta pusaka Lim Mah Ee @ Baba Mahee ('si mati'). Walaupun si mati telah meninggal dunia pada tahun 1848, tanah itu masih tidak ditadbirkan sehingga 1992. Yeon Oon Theam ('defendan pertama'), salah seorang benefisiari dan pentadbir dicadangkan bagi harta pusaka si mati, telah bersetuju untuk menjual tanah kepada Wayrex Sdn Bhd ('defendan keempat') atau penamanya dengan harga RM450,000. Di bawah perjanjian ini, telah dipersetujui bahawa defendan pertama, penjual, pada kos dan perbelanjaan sendiri akan memohon untuk mendapatkan pemberian surat kuasa mentadbir harta pusaka si mati dan suatu perintah mahkamah membenarkan penjualan tanah pada harga RM450,000 daripadanya kepada defendan keempat. Defendan pertama mendapat pemberian surat kuasa mentadbir dan suatu perintah mahkamah bagi

penjualan tanah. Selepas membayar harga pembelian penuh, defendan pertama menyempurnakan pindah milik dalam Borang 14A Hybrid Gold Sdn Bhd ('defendan kelima'), penama defendan keempat. Sementara pengadilan pindah milik di Borang 14A sedang berjalan, Lim Ewe Bee dan lain-lain ('plaintif-plaintif'), yang mendakwa sebagai ahli waris yang berhak kepada harta pusaka si mati, menyebabkan satu kaveat pendaftar, untuk dimasukkan ke atas tanah tersebut atas alasan bahawa defendan-defendan keempat dan kelima telah memperoleh tanah tersebut dengan cara fraud. Plaintif turut memfailkan saman ('saman pertama') untuk mengetepikan pemberian surat pentadbiran dan perintah mahkamah membenarkan jualan. Defendan kelima berjaya memohon untuk mengetepikan kaveat pendaftar dan telah mendapat suatu perintah untuk mendaftarkan pindah milik tersebut. Selepas itu, menurut perjanjian kompromi yang dimeterai antara plaintif dan defendan keempat dan kelima, plaintif, oleh suatu perintah mahkamah, menghentikan keseluruhan samannya terhadap defendan keempat dan kelima tanpa kebebasan untuk memfailkan semula. Walau bagaimanapun, plaintif memfailkan saman yang ada sekarang ('saman kedua'), antara lain, mengetepikan pemberian surat kuasa mentadbir dan perintah mahkamah atas alasan fraud dan konspirasi. Permohonan oleh defendan keempat dan kelima untuk membatalkan saman ini telah ditolak dengan kos dan dengan itu rayuan ini.

Diputuskan, membenarkan rayuan dengan kos:

(1) Guaman kedua plaintif terhadap defendan keempat dan kelima merupakan penyalahgunaan proses mahkamah dan tidak mapan. Tindakan undang-undang ini berkemungkinan gagal kerana perjanjian kompromi dan perintah mahkamah di mana plaintif telah, dengan persetujuan, bersetuju untuk tidak memfailkan apa-apa guaman yang baru. Oleh itu writ saman dan pernyataan tuntutan yang difailkan oleh plaintif terhadap defendan keempat dan kelima telah dibatalkan (lihat perenggan 18).

(2) Penjualan tanah defendan pertama kepada defendan keempat dan kelima telah dibenarkan oleh perintah mahkamah di bawah s 60 (4) Akta Probet dan Pentadbiran 1959 (Akta). Oleh itu, berdasarkan fakta-fakta kes tersebut, defendan kelima telah dengan jelas memperolehi hak milik tak boleh disangkal ke atas tanah di bawah s 340 Kanun Tanah Negara dibaca bersama s 60 (3) Akta Akta, yang tidak boleh diketepikan (lihat perenggan 13 & 19).

(3) Hanya benefisiari harta pusaka si mati yang harus dipersalahkan kerana tidak memastikan bahawa tanah itu dibahagikan dan terletak hak dalam waris yang sah di sisi undang-undang pada tahun 1848, atau tidak lama selepas itu. Dalam hal keadaan ini, mereka disifatkan telah

dilucuthakkan dan/atau diketepikan hak-hak undang-undang dan/atau ekuiti, jika ada, tanah tersebut (lihat perenggan 20).]

Notes

For cases on application to strike out action, see 2(3) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 7482–7494.

For cases on fraud, see 8(2) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 3333–3334.

Legislation referred to

National Land Code ss 340, 418
Probate and Administration Act 1959 ss 60(4), 64(3)
Rules of the High Court 1980 O 18 r 19(1), Form 14A

Appeal from: Civil Suit No 22–322 of 2007 (High court, Pulau Pinang)

Bastian Vendargon (R Rajasingam & Co) for the appelants.
Jimmy Geh (Ismail Khoo & Associates) for the respondents.

KN Segara JCA (delivering judgment of the court):

[1] The appellants before us are the fourth and fifth defendants, respectively, in the High Court. The appellants' application under O 18 r 19(1) of the Rules of High Court 1980 to strike off the respondents' (plaintiffs') claim was dismissed with costs in the court below. We allowed the appeal. We are unanimous that the claim against the fourth and fifth defendants is clearly unsustainable.

[2] The land known as Lot 3475, Section 5, Town of Georgetown, Penang (the said land) forms part of the estate of Lim Mah Ee @ Baba Mahee who died sometime in 1848. Although letters of administration to the estate of the deceased, Lim Mah Ee, had been taken out earlier, it appears that the *said land* had remained unadministered right up to 1992 and, is occupied by squatters and used as a Chinese cemetery.

[3] By a written agreement made on the 2 February 1992 between the vendor Yeoh Oon Theam (the first defendant) as the proposed administrator of the estate and effects of Lim Mah Ee @ Baba Mahee agreed to sell to Wayrex Sdn Bhd (the fouth defendant) or its nominee the said land. The recital of the agreement places in proper perspective the status of the said land at the time of the agreement. It reads:

WHEREAS

(1) the Vendor is one of the beneficiaries and descendants of the estate of one Lim Mah Ee @ Baba Mahee, deceased;

(2) the said Lim Mah Ee @ Baba Mahee, deceased died testate sometime in the year 1848 having duly executed his last will and testament dated 24/12/1845;

(3) under the said will of Lim Mah Ee @ Baba Mahee, deceased, the deceased appointed one Tan Kim Neoh to be his sole executrix and trustee of his estate;

(4) at the time of the death of the deceased he was the registered owner of that piece of land known as Lot 56 T.S. 5 NED Penang (hereinafter referred to as 'the said land') by virtue of a Deed Registration No. 6093 of 1831;

(5) the said Tan Kim Neoh, died without obtaining probate of the Will of the said Lim Mah Ee @ Baba Mahee, deceased;

(6) on 8/9/1856 the Will of the said Lim Mah Ee @ Baba Mahee, deceased was proved before the then division of the Court of Judicature of Province of Wales (now known as Penang) and Letters of Administration with the said Will annexed were granted to Lim Hong Guan, the grand nephew of the said deceased;

(7) the said Lim Hong Guan died without having fully administered the estate of Lim Mah Ee @ Baba Mahee, deceased;

(8) on 1/8/1878 the Grant of Letters of Administration de bonis non with the Will annexed were granted to Tan Chye Hun, one of the great grand niece of the said deceased;

(9) the said Tan Chye Hun died without having the said estate of Lim Mah Ee @ Baba Mahee, deceased, fully administered;

(10) after the death of the said Tan Chye Hun, deceased, the said land was under the control and care of the Vendor's grandfather Yeoh Cheow Eang who died on 23/7/1954;

(11) the Vendor is now in the process of applying to Court for a fresh grant of Letters of Administration de bonis non with the Will annexed in respect of the estate of Lim Mah Ee @ Baba Mahee, deceased;

(12) a check with the Registry of Land Titles, Penang revealed that the said land has been vested in the name of Majlis Ugama Islam Pulau Pinang dan Seberang Prai pursuant to an Order of Court dated 15/4/1991 in Penang High Court Originating Summons No.24-263-1991 (Ct2);

(13) the Vendor's solicitors have made a search of the Court file in Originating Summons No. 24-263-91 and discovered that the Majlis Ugama Islam Pulau Pinang dan Seberang Prai obtained the Vesting Order by representing to Court:-

  (a) that the said Lim Mah Ee @ Baba Mahee, deceased, was a muslim and that he died leaving no issue;

  (b) that under the Muslim Law Enactment, 1959 when a Muslim dies leaving no issue his estate shall vest with the Baitumal (Majlis Ugama).

(14) the Vendor verily believes that the Vesting Order dated 15/4/1991 was obtained by Majlis Ugama Islam under a misapprehension. The said Lim Mah Ee @ Baba Mahee, deceased was a Chinese and not a Muslim as deposed by the said Majlis Ugama Islam in their application to Court;

(15) the Vendor has accordingly instructed his solicitors to file proceedings against the said Majlis Ugama Islam Pulau Pinang dan Seberang Prai and other parties responsible for having the said land wrongfully vested in the name of Majlis Ugama Islam and to set aside the Court Order dated 15/4/1991 referred to above and re-vest the said land in the name of Lim Mah Ee @ Baba Mahee, deceased;

(16) the annual quit rent payable in respect of the said land is $8,381.00 and the outstanding arrears of quit rent is over $200,000.00;

(17) at the present moment the Vendor is unable to ascertain and/or to trace the actual beneficiaries and/or lawful descendants of the said Lim Mah Ee @ Baba Mahee, deceased;

(18) the Vendor will apply to Court for the determination of the beneficiaries who are entitled to the estate of Lim Mah Ee @ Baba Mahee, deceased in accordance with the Rules of the High Court, 1980 in due course;

(19) there are numerous squatters and Chinese graves on the said land and there is no income derived therefrom;

(20) for the purposes of raising the necessary funds for payment of quit rent and to cover legal expenses for the recovery of the said land the Vendor intends to apply to Court for leave to sell the land subject to the grant of Letters of Administration de bonis non to the estate of Lim Mah Ee @ Baba Mahee, deceased, and for the Order of Court to set aside the Vesting Order dated 15/4/1991 in favour of Majlis Ugama Islam Pulau Pinang dan Seberang Prai being first obtained;

(21) the Vendor has agreed to sell and the Purchaser has agreed to purchase the said land upon the terms and conditions hereinafter contained.

[4] Amongst the terms and conditions agreed were as follows:

(1) …

(2) The price of the said land shall be the sum of Ringgit Four Hundred and Fifty Thousand ($450,000.00) only …

(3) The Vendor will at his own cost and expense apply to the High Court in Malaya at Penang … to obtain the following:—

(1) grant Letters of Administration de bonis non to the estate of Lim Mah Ee @ Baba Mahee;

(2) an Order of Court to set aside the Order dated 15/4/1991 in Originating Summons No.24-263-91 in favour of Majlis Ugama Islam and re-vest the said land in the name Lim Mah Ee @ Baba Mahee, deceased, or his estate;

(3) an order of Court sanctioning the sale herein by the Vendor to the Purchaser and/or its nominee(s) at the price of $450,000.00 only and such application shall be filed within (15) days from date hereof.

[5] The first defendant duly obtained: **A**

(a) the *grant of letters of administration dated 19 March 1993* in Penang High Court Petition No 31–177 of 1993 to the estate of the said deceased;

(b) an *order of court dated 29 May 1995* in Penang High Court Civil Suit No 22–55 of 1994 *to recover the said land* from Majlis Ugama Islam Pulau Pinang dan Seberang Prai. The parties in that suit were: **B**

(i) Yeoh Oon Theam (*Pentadbir bagi Harta Pusaka* Baba Mahee @ Lim Mah Ee, *si mati*) as plaintiff; and

(ii) **C**

(A) Majlis Ugama Islam Pulau Pinang dan Seberang Prai;

(B) Pendaftar Hakmilik Tanah, Pulau Pinang;

(C) Pentadbir Tanah, Daerah Timur Laut, Pulau Pinang, as defendants. **D**

[6] The material part of the order reads:

DENGAN PERSETUJUAN ADALAH DENGAN INI DIPERINTAHKAN seperti berikut: **E**

(1) bahawa Baba Mahee @ Lim Mah Ee adalah tuan punya sebenar tanah yang dikenali sebagai Lot 3475, Pecahan Bandar 5, Daerah Timur Laut, Pulau Pinang (selepas ini dikenali sebagai 'tanah tersebut') menurut Indenture bertarikh 2hb April 1831 Pendaftaran No. 6093/1831;

(2) bahawa catitan yang dibuat oleh Defendan Kedua pada 10hb Mac, 1988 dalam Daftar Hakmilik Tanah tersebut dimana Tan Chye Hun dibatalkan dan digantikan dengan nama Baba Mahu adalah salah dan batal; **F**

(3) bahawa Notis Tuntutan di dalam Borang 6A bertarikh 28hb November, 1990 adalah tidak sah dan batal;

(4) Perintah Mahkamah bertarikh 15hb April, 1991 yang dibuat dalam Saman Pemula No. 24-263-91 dengan ini diketepikan dan permohonan tersebut dengan ini ditolak; **G**

(5) bahawa Kaveat Persendirian Jilid: 259 Folio: 1 bertarikh 6hb April, 1991 yang dimasukkan oleh Defendan Pertama dengan ini dibatalkan dalam Daftar Hakmilik tanah tersebut; **H**

(6) bahawa Defendan Pertama dengan serta merta mengembalikan hakmilik keluaran (Perakuan Pendahuluan Mengenai Hakmilik) tanah tersebut kepada Plaintiff dan atau peguamcaranya;

(7) bahawa tanah tersebut dengan ini diletakhak kepada Plaintiff sebagai Pentadbir Harta Pesaka Baba Mahee @ Lim Mah Ee, simati; **I**

(8) bahawa Defendan Kedua dengan ini diarahkan mengambil semua tindakan-tindakan yang perlu untuk memberi kesan kepada Perintah- Perintah yang dibuat disini;

(9) bahawa Pihak Berkuasa Negeri memulangkan kembali kesemua wang kepada Defendan Pertama yang telah dibayar oleh Defendan Pertama kepada Defendan Ketiga mengenai hasil tanah tersebut;

(10) bahawa Plaintiff membayar kepada Defendan Pertama wang sebanyak RM3,900-00 iaitu kos guaman yang telah dibelanjakan oleh Defendan Pertama dalam Saman Pemula No. 24-263-91;

(11) bahawa tiap-tiap pihak menanggung kos masing-masing dalam tindakan ini dan tiada perintah mengenai gantirugi.

(12) …

[7] The first defendant also duly obtained an order of court dated 8 January 1997 in Originating Summons No 24–1132 of 1996 *sanctioning the sale of the said land* at the price of RM450,000 from the first defendant to the fourth defendant.

[8] The sale and purchase agreement dated 28 February 1992 was completed upon payment of the full purchase price and the execution of the transfer in Form 14A from the first defendant to Hybrid Gold Sdn Bhd (the fifth defendant) which is the nominee of the first defendant.

[9] Whilst the adjudication of the transfer in Form 14A was pending, the plaintiffs caused the Pendaftar Hakmilik Tanah Pulau Pinang (the sixth defendant) to lodge a registrar's caveat on the said land on the ground that the fourth and fifth defendants had acquired the *said land* by fraud and proceeded to file Suit No 22–408 of 1998, inter alia, to set aside the grant of letters of administration and the order of court sanctioning the sale and transfer in Form 14A.

[10] The fifth defendant then filed an appeal to the court under s 418 of the National Land Code ('NLC') to set aside the registrar's caveat and prayed for an order to direct the registrar of titles, Penang to register the said transfer. The plaintiffs applied to intervene in the s 418 of the NLC appeal but the court dismissed the plaintiffs' application on 10 June 1998. The court set aside the registrar's caveat and ordered the sixth defendant to register the said transfer.

[11] *The plaintiffs' did not appeal against the order of court dated 10 June 1998 and the transfer in Form 14A in favour of the fifth defendant was duly registered.*

[12] Section 64(3) of the Probate and Administration Act 1959 (Act 97) provides as follows:

> (3) All transfers and conveyances of any interest in movable and immovable property made to a purchaser either before or after the commencement of this Act by a person to whom probate or letters of administration have been granted are

valid, notwithstanding any subsequent revocation or variation, either before or after the commencement of this Act, of the probate or administration.

[13] In the above circumstances, on the indisputable factual matrix relating to the *said land* presented to the court, the fifth defendant has clearly acquired *an indefeasible title* to the said land upon the registration of the transfer under s 340 of the National Land Code, read together with s 64(3) of the Probate and Administration Act 1959.

[14] In the circumstances, the plaintiffs requested the fourth and fifth defendants to settle the pending Suit No 22–408 of 1998 between the plaintiffs and the fourth and fifth defendants. The fourth and fifth defendants agreed to do so subject to the terms and conditions in the *compromise agreement dated 5 March 2001* which, inter alia, provided:

(1) In consideration of the 1st Party not pursuing any claim for costs and/or damages against the 2nd and 3rd Party arising out of the legal proceedings and/or lodgment of private/registrar's caveats against the said land, the 2nd Party hereby agree and undertake to forthwith withdraw the Civil Suit No: 22-408-1998 against the 1st Party with no order as to costs or in the alternative the 2nd Party hereby agrees to have the said action struck out by consent with no order as to costs without liberty to file a fresh and also to forthwith withdraw the existing Private Caveat lodged against the said land under Bilangan No: 1769/2000 Jilid:583 Folio:200 lodged on 11/4/2000 at their cost and expenses.

(2) The 2nd Party and 3rd Party hereby further agree to undertake not to file any further proceedings against the 1st Party in respect of the said land or lodge any further caveats against the said land either by themselves individually or collectively or through any other persons or bodies claiming through them.

[Note: In the preamble the 'first party' refers jointly and severally to Wayrex Sdn Bhd and Hybrid Gold Sdn Bhd, the 'second party' refers jointly and severally to (1) Lee Ewe Bee; (2) Lee Ah Loong; (3) Lee Ewe Liang; (4) Lee Chiew Kin; (5) Lee Chiew Kee @ Noor Liza Abdullah and 'third party' refers to Lee Chiew Sim]

[15] By an order of court, dated 9 March 2001, the plaintiffs wholly discontinued Suit No 22–408 of 1998, without liberty to file afresh.

[16] The material parts of the order of court dated 9 March 2001 reads:

… DENGAN PERSETUJUAN ADALAH DIPERINTAHKAN bahawa Defendan Pertama diberi kebenaran untuk menarik-balik Lampiran 13 DAN SELANJUTNYA DENGAN PERSETUJUAN ADALAH DIPERINTAHKAN bahawa Defendan-Defendan Kedua dan Ketiga diberi kebenaran untuk menarik-balik Lampiran 15 DAN JUGA SELANJUTNYA DENGAN PERSETUJUAN ADALAH DIPERINTAHKAN bahawa Plaintiff diberi

kebenaran untuk memberhentikan keseluruhan tindakan ini terhadap Defendan-Defendan Pertama, Kedua dan Ketiaa DAN AKHIRNYA DIPERINTAHKAN bahawa tindakan ini dibatalkan tanpa perintah mengenai kos dan tanpa kebebasan untuk memfailkan semula.

[Note: The *plaintiffs* in Suit 22–408 of 1988 are: (1) Lee Ewe Bee; (2) Lee Ah Loong; (3) Lee Ewe Liang; (4) Lee Chiew Kin; (5) Lee Chiew Kee (sebagai benefisiari-benefisiari bagi harta pesaka Baba Mahee @ Lim Mah Ee, si mati) and the *defendants* are: (1) Yeoh Oon Theam; (2) Wayrex Sdn Bhd; (3) Hybrid Gold Sdn Bhd]

[17] The plaintiffs, in breach of cl 2 of the compromise agreement dated 5 March 2001 (see above) and the order of court dated 9 March 2001 (see above), filed the present action(Suit No 22–322 of 2007) alleging fraud and conspiracy against the fourth and fifth defendants and prayed, inter alia, to set aside the grant of letters of administration dated 19 March 1993, the order of court dated 8 January 1997, the order of court dated 10 June 1998 and the transfer of the said land in favor of Hybrid Gold Sdn Bhd (the fifth defendant).

[18] We are unanimous that it is plain and obvious that Suit No 22–322 of 2007, against the fourth and fifth defendant, is an abuse of the process of court and unsustainable. The suit is bound to fail because of the compromise agreement and the order of court dated 9 March 2001, referred to earlier, wherein the plaintiffs had by consent agreed not to file any fresh suit after the Suit No 22–408 of 1988 was struck off.

[19] We are unanimous that the second appellant's title to the *said land* cannot be set aside because the sale to the appellants was *sanctioned* by the court on 8 January 1997 pursuant to an application under s 60(4) of the Probate and Administration Act 1959 by the administrator de bonis non of the estate of the deceased, and the transfer was registered pursuant to an order of court dated 10 June 1998. The relevant provision of the Probate and Administration Act reads:

> An administrator may not, without the previous permission of the Court —
>
> (a) mortgage, charge or transfer by sale, gift exchange or otherwise any immovable property situate in any State and for the time being vested in him; or
>
> (b) …

[20] The administrators and/or beneficiaries of the estate of Lim Mah Ee @ Baba Mahee, deceased, *at the time of deceased's death in 1848*, have only themselves to blame for not ensuring the said land was distributed and vested in the lawful beneficiary in 1848, or soon thereafter. This has been compounded by the indolence of any purported beneficiaries for not asserting

their claim to the said land for more than one century. In the circumstances, they must be deemed to have forfeited and/or waived their legal/equitable rights, if any, to the said land. Further, the passage of more than one century cannot contribute to alleviating the difficulty in ascertaining the lawful descendants/beneficiaries of the deceased, at the time of the appellants acquiring the title to the said land in 1997/1998.

[21] Appeal is allowed with costs fixed at RM15,000. Deposit refunded to appellants. Order of High Court set aside. The writ of summons and statement of claim filed by the plaintiffs against the fourth and fifth defendants is struck out.

Appeal allowed with costs.

Reported by Kohila Nesan